

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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H. CRISTINA CHEN-OSTER, SHANNA	:	
ORLICH, ALLISON GAMBA and MARY	:	
DE LUIS,	:	
	:	
Plaintiffs,	:	
v.	:	10 Civ. 6950 (AT) (RWL)
	:	
GOLDMAN, SACHS & CO. and THE	:	
GOLDMAN SACHS GROUP, INC.,	:	
	:	
Defendants.	:	
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**MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFFS' MOTION TO STRIKE**

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The Goldman Sachs Group, Inc.*

November 25, 2020

Defendants write to oppose Plaintiffs' motion to strike (ECF No. 1120) their sur-reply in opposition to Plaintiffs' motion for reconsideration of this Court's November 5, 2020 Order (ECF No. 1117).

Plaintiffs' motion for reconsideration seeks additional document discovery from Lloyd Blankfein and two other "apex" Goldman Sachs executives. Plaintiffs chose to file their opening brief ten days early, before Mr. Blankfein's deposition, with Defendants' opposition due the very day of that deposition. As a result, Plaintiffs' motion did not mention Mr. Blankfein's testimony at all (ECF No. 1104), and Defendants merely pointed out in a footnote that the deposition elicited no support for Plaintiffs' theory that the former CEO had responsibility for approving, revising or implementing the three challenged processes (ECF No. 1110 at 5 n.2).

On reply, Plaintiffs addressed Mr. Blankfein's deposition for the first time with four pages of argument regarding his testimony. (ECF No. 1113 at 5–8.) Because Defendants had no prior opportunity to address these new points, they submitted a brief responsive sur-reply—the precise circumstances where courts in this Circuit routinely accept sur-reply briefing. *See, e.g., Ferrie v. DirecTV, LLC*, 2016 WL 183474, at *1 n.1 (D. Conn. Jan. 12, 2016) (considering portions of sur-reply addressing "new evidence" submitted with reply brief); *MMC ppa v. Bridgeport Hosp.*, 2015 WL 4656497, at *2 (D. Conn. Aug. 5, 2015) (allowing sur-reply where reply included material to which party "should be provided an opportunity to respond"); *Barbour v. Colvin*, 993 F. Supp. 2d 284, 287–88 (E.D.N.Y. 2014) (Spatt, J.) (granting leave to file a sur-reply to address "Plaintiff's newly-made request . . . in its reply brief").

Defendants also followed proper procedure by requesting leave to file the sur-reply in the first paragraph of their brief, rather than in a separate filing. *Indiv. Prac. R. III.E*. As the Court knows, it is standard practice in this Circuit to request leave to file a sur-reply and submit

the proposed sur-reply in a single filing. *See, e.g., Anghel v. N.Y. State Dep't of Health*, 947 F. Supp. 2d 284, 293 (E.D.N.Y. 2013) (Spatt, J.) (granting leave to file a sur-reply accompanied by “proposed sur-reply memoranda” that “provide[d] relevant information”); *Navarrete De Pedrero v. Schweizer Aircraft Corp.*, 635 F. Supp. 2d 251, 258–59 (W.D.N.Y. 2009) (granting “leave to file a sur-reply” accompanied by “proposed sur-reply memorandum”).

Accordingly, this Court should deny Plaintiffs’ motion to strike.

Respectfully,

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